

EXHIBIT 4

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919 CW

**EXHIBIT 61 TO THE DECLARATION OF
STEVE W. BERMAN IN FURTHER
SUPPORT OF PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION AND
APPOINTMENT OF HAGENS BERMAN
SOBOL SHAPIRO LLP AS CO-LEAD
CLASS COUNSEL**

[REDACTED VERSION]

EXHIBIT 61
FILED UNDER SEAL

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GRANT HOUSE and SEDONA PRICE,)
on behalf of themselves and)
all others similarly situated,)
Plaintiffs,) Civil Action No.
v.) 4:20-cv-03919-CW
NATIONAL COLLEGIATE ATHLETIC)
ASSOCIATION; PAC-12 CONFERENCE;)
THE BIG TEN CONFERENCE, INC.;)
THE BIG TWELVE CONFERENCE,)
INC.; SOUTHEASTERN CONFERENCE;)
and ATLANTIC COAST CONFERENCE,)
Defendants.)

)

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VIDEO DEPOSITION OF BARBARA OSBORNE
June 15, 2023, 9:41 a.m. CST
150 North Riverside Plaza
Chicago, Illinois 60606

Job No. J9780979

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1 question is:

2 You don't teach any courses in the
3 economics department, do you?

4 A No, I do not.

5 Q Okay. So staying on page 1 to 2 of your
6 résumé, this shows your professional experience
7 going back to -- let's see, it goes back even
8 longer than I thought. Sorry. It goes back to
9 19 -- 1983; is that correct?

10 A Correct.

11 Q Okay. And on page 2, it shows that you
12 worked for several years at Brandeis University in
13 Waltham, Massachusetts --

14 A Yes.

15 Q -- is that correct?

16 A Yes.

17 Q Okay. Like I said, my mom went there, as
18 did my first cousin, so very familiar with the
19 school. Great school.

20 Brandeis University competes in NCAA
21 athletics at the Division III level, correct?

22 A Yes, it does.

23 Q Okay. And that's lower than Division I
24 and lower than Division II, correct?

25 A Yes.

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1 Q Okay. Thank you. Thank you for when you
2 remembered today --

3 A Yeah.

4 Q -- volunteering that.

5 Just to go back, where was -- I was asking
6 about different types of expert analysis or
7 testimony you've given.

8 So this is the first time you're analyzing
9 an expert's proposed model for measuring past
10 damages; is that correct?

11 MS. CAPPS: Objection, form.

12 THE WITNESS: Yes, it is.

13 BY MR. SIEGEL:

14 Q Okay. Prior to this case, have you ever
15 been employed in a permanent or contracting
16 position by any of the defendants in this case?

17 MS. CAPPS: Objection, form.

18 THE WITNESS: No.

19 BY MR. SIEGEL:

20 Q Okay. So you've never worked for the NCAA
21 before?

22 A No.

23 Q Or any of the Power Five conferences?

24 A No.

25 Q And just to be clear, you understand that

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1 BY MR. SIEGEL:

2 Q Sure. I'm just -- so you -- so
3 in -- generally, your conclusion as you're
4 expressing in this paragraph, is that
5 Professor Rascher's broadcast NIL model implicates
6 the Title IX obligations of the Power Five member
7 schools; is that right?

8 MS. CAPPS: Objection, form.

9 THE WITNESS: Yes, in this paragraph, it
10 describes the reasons why these payments would be
11 implicated by Title IX.

12 BY MR. SIEGEL:

13 Q Right, these payments implicate -- I think
14 specifically -- I'm not -- I'm really trying to
15 get down exactly what your opinion is.

16 So based on these facts --

17 A Mm-hmm.

18 Q -- and your assessment of Dr. Rascher's
19 model, you believe that the broadcast NIL model
20 that he proposes implicates the Title IX
21 obligations of the schools, correct?

22 MS. CAPPS: Objection, form.

23 THE WITNESS: Actually, it says that it
24 applies to the broadcast revenue that the
25 conferences distribute to their member schools.

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1 BY MR. SIEGEL:

2 Q Right. I -- yes, that aspect of his
3 model, that's a part of his model, right?

4 A Correct.

5 Q But you're saying -- I guess all I'm
6 trying to say is you believe that that aspect of
7 his model, when you look at the facts including
8 the relationship between the schools and the
9 conferences, you believe that that aspect of his
10 model implicates the Title IX obligations of the
11 schools?

12 MS. CAPPS: Objection, form.

13 THE WITNESS: Yes.

14 BY MR. SIEGEL:

15 Q Okay. Obligates, implicates, I'm not
16 trying -- I'm not trying to use the wrong word.
17 I'm just -- you know, okay.

18 I mean, I guess, this is another way to
19 say it, is that, you know, based on your review of
20 the statute, and I believe the regulations, and
21 you're looking at the relationship between the
22 schools and the conferences, again, you believe
23 that the model implicates the schools' Title IX
24 obligations; is that right?

25 MS. CAPPS: Objection, form.

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1 THE WITNESS: So this is about -- the
2 model is about the conference payments --

3 BY MR. SIEGEL:

4 Q Uh-huh.

5 A -- and so because of how all of this works
6 together and because of the institutional
7 involvement, it -- Title IX is implicated in this
8 conference scheme.

9 Q Right, but Title IX obligations of the
10 schools?

11 A Schools do have Title IX obligation.

12 Q Right. So we're going to get to this
13 later but I think -- and I'm really just trying to
14 understand your opinion, because you -- we'll get
15 to this later, but you agree that the conferences
16 are not subject to Title IX?

17 MS. CAPPS: Objection, form.

18 BY MR. SIEGEL:

19 Q Is that true?

20 A Yes.

21 Q Okay. And, however, because of the way
22 you understand this model to work and the
23 relationship between the conferences and the
24 schools, you believe that how the model works
25 would implicate the Title IX obligations of the

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1 schools?

2 MS. CAPPS: Objection, form.

3 THE WITNESS: I believe that the way the
4 model works that Title IX would be applied to this
5 model.

6 BY MR. SIEGEL:

7 Q Okay. Applied to the schools'
8 responsibilities under the model?

9 MS. CAPPS: Objection, form.

10 THE WITNESS: The schools' involvement
11 under the model is part of what implicates
12 Title IX.

13 BY MR. SIEGEL:

14 Q Part of what implicates the schools'
15 obligation under Title IX, right? The schools are
16 the ones that have the obligations under Title IX,
17 right?

18 A Schools --

19 MS. CAPPS: Objection, form.

20 THE WITNESS: Sorry.

21 Schools always have the obligation under
22 Title IX.

23 BY MR. SIEGEL:

24 Q Okay. And what you're saying is the way
25 this model work, some would argue, you know, that

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1 the schools -- the schools' Title IX obligations
2 are not implicated by the model, but you're
3 concluding that their obligations are implicated
4 by the way this model works, correct?

5 MS. CAPPS: Objection, form.

6 THE WITNESS: So, again, because of the
7 schools' involvement with the conferences, so the
8 plaintiffs' model is a model that requires direct
9 payments from the conferences to the
10 student-athletes. Whereas the conferences in
11 general might not be or would not be subject to
12 Title IX because of the deep involvement of the
13 member institutions with the conferences. I do
14 believe that this model and these transactions
15 would be subject to Title IX.

16 BY MR. SIEGEL:

17 Q Right. And, therefore, the schools'
18 responsibilities under Title IX would be
19 implicated?

20 A I don't make that conclusion.

21 Q So you don't make that -- so your -- I
22 guess I'm -- I guess I'm a little confused here,
23 because really I thought the whole -- the
24 whole -- the point of -- the point of this part of
25 your opinion was that Title IX obligations would

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1 be implicated, and the schools would have to be
2 concerned about that because they're the ones that
3 have to comply with Title IX.

4 MS. CAPPS: Objection, form.

5 THE WITNESS: Yes, that is true, that the
6 schools would have to be concerned about this, and
7 it would, if applied.

8 BY MR. SIEGEL:

9 Q And it would implicate their own Title IX
10 responsibilities, correct?

11 A It has a dramatic impact on their own
12 Title IX responsibilities, yes.

13 Q Okay. It implicates them. You don't like
14 the word "implicate"? I mean, I'm --

15 A Yes.

16 Q Okay. I don't think it's controversial.
17 It's part of your opinion. But anyway...

18 MS. CAPPS: Objection, form.

19 BY MR. SIEGEL:

20 Q That was the hardest paragraph, I have to
21 admit, to discuss with you. So I'm glad we got
22 through it.

23 MS. CAPPS: Objection, form.

24 BY MR. SIEGEL:

25 Q In paragraph 31, please, if you look at

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1 reviewed the model and the facts and the
2 depositions under Title IX, which is your primary
3 area of research, your conclusion was that it
4 violated Title IX, right?

5 MS. CAPPS: Objection, form, assumes facts
6 not in evidence, misstates her testimony and
7 misstates the report.

8 THE WITNESS: So I believe I've answered
9 that question several times. I'm not providing a
10 legal conclusion. I'm providing my opinion about
11 how I would apply the law.

12 BY MR. SIEGEL:

13 Q How you would apply the law to -- to the
14 model and the facts, right?

15 MS. CAPPS: Objection, form.

16 THE WITNESS: Yes.

17 BY MR. SIEGEL:

18 Q And after you applied the model to the law
19 and the facts, you come to this conclusion that
20 the payment scheme is a violation of Title IX,
21 right?

22 MS. CAPPS: Objection, form, misstates her
23 testimony and the report.

24 You can answer the question.

25 THE WITNESS: Yes.

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1 your opinion is that Title IX does not -- your
2 opinion, as you sit here today, is that Title IX
3 does not apply to the conference or the --
4 conferences or the NCAA?

5 A Yes.

6 Q Okay. And you cite for that proposition,
7 footnote 57, which says:

8 National Collegiate Athletic Association,
9 it gives a Supreme Court cite but it's actually --
10 A Smith.

11 Q -- Smith. NCAA vs Smith?

12 A Right.

13 Q Okay. I make those mistakes in my briefs
14 all the time.

15 MS. CAPPS: Objection, form.

16 BY MR. SIEGEL:

17 Q So you rely on the Supreme Court's
18 decision in NCAA vs Smith for your conclusion that
19 the conferences are not subject to Title IX,
20 correct?

21 A Yes. Based on the Court's analysis in
22 that particular case, they conclude that the NCAA
23 is not subject to Title IX; and because
24 conferences are voluntary membership institutions
25 similar to the NCAA, I also assume that the

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1 conferences are not as well.

2 Q You -- you assume or is that -- is that
3 your analysis?

4 A I state.

5 Q Is that your anal- -- is your analysis
6 that based on the Supreme Court's decision in
7 Smith, the conferences are also not subject to
8 Title IX under -- under the holding of Smith?

9 A Yes.

10 Q Okay. Besides what you've already stated,
11 can you further elaborate on why the conferences
12 are not subject to Title IX under Smith?

13 MS. CAPPS: Objection, form.

14 THE WITNESS: Beyond what I already
15 stated, no.

16 BY MR. SIEGEL:

17 Q Okay. Can you restate that again, because
18 I just -- I think I might have missed that?

19 MS. CAPPS: Objection, form. There's no
20 question.

21 BY MR. SIEGEL:

22 Q Can you restate your reasoning for why you
23 believe the Supreme Court's decision in NCAA vs
24 Smith would lead to the conclusion that the
25 conferences are also not subject to Title IX?

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1 is one of your expert opinions that you're
2 expressing in this report that if -- the broadcast
3 model implicates the Title IX obligations of the
4 member schools of the conferences?

5 MS. CAPPS: Objection, form.

6 THE WITNESS: It has an impact on the
7 schools, absolutely, so implicates their
8 obligations, yes.

9 BY MR. SIEGEL:

10 Q That is one of the expert opinions in your
11 report?

12 A Yes.

13 Q Okay. Is -- is -- is it an expert opinion
14 in your report that the broadcast NIL model
15 implicates Title IX obligations for the
16 conferences?

17 MS. CAPPS: Objection, form, asked and
18 answered.

19 THE WITNESS: No.

20 BY MR. SIEGEL:

21 Q Okay. Okay. In your report, did you
22 identify any case that found a school liable under
23 Title IX because of the actions of the conferences
24 of which it was a member?

25 A No.

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1 Q Has any U.S. body with legal authority
2 ever found a school liable under Title IX because
3 of the actions of the conferences under which it
4 was a member?

5 A Not to the best of my knowledge.

6 Q Okay. Yet this is one of your opinions,
7 as you just stated, based on your application of
8 your view of the facts in this case as applied to
9 Title IX statute, its governing regulations --

10 MS. CAPPS: Objection, form.

11 BY MR. SIEGEL:

12 Q -- that -- guidance letters and other
13 administrative guidance, correct?

14 MS. CAPPS: Objection, form, asked and
15 answered.

16 THE WITNESS: Yes, I conclude that this
17 model would be implicated by Title IX that I --
18 I'm not aware of anything else because that model
19 that is proposed by Mr. Rascher did not exist
20 until he created it.

21 BY MR. SIEGEL:

22 Q Okay.

23 A So --

24 Q But there hasn't been any case that's ever
25 found a school --

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1 detail on page 31, Section A.

2 A Okay.

3 Q Okay. You say that one -- one factor for
4 this conclusion that we just discussed is that
5 conferences are governed and controlled, in your
6 opinion, by a board of directors and composed of
7 representatives of member institutions. Correct?

8 A Yes.

9 Q Okay. And, again, you didn't cite any
10 legal authority holding that this makes schools
11 liable for the actions of conferences, did you?

12 MS. CAPPS: Objection, form.

13 THE WITNESS: No.

14 BY MR. SIEGEL:

15 Q Okay. Are you an expert in entity law?

16 A Can you tell me what entity law is?

17 Q Like corporations law.

18 A Oh, I -- no, I'm not an expert in
19 corporate law, no.

20 Q Are you an expert in piercing the
21 corporate veil?

22 A I'm not an expert in that area, no.

23 Q Okay. And for factual support for this
24 proposition, you cite only the declarations of
25 conference and school officials and the conference

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1 bylaws and the handbooks, correct? And you can
2 look at your citations if you want.

3 A Could you repeat the question?

4 Q Sure.

5 On page 31 and 32, when you're discussing
6 that prong -- that factor of your analysis, you
7 cite only the declarations of conference officials
8 in various conference bylaws, handbooks and
9 constitutions.

10 A Yes.

11 Q Okay. You don't cite anything else?

12 A No, because this is just showing how the
13 conferences are made up of their member
14 institutions and how they operate. So those would
15 be the appropriate documents to rely on in my
16 opinion.

17 Q Okay. But, again, you don't cite any case
18 law to support the position of this supposed
19 control of the schools, of the conferences,
20 subject schools to Title IX liability for the
21 actions of the conferences, right?

22 A No.

23 Q So I'm going to go through that, I'm going
24 to go through that list on 78 but -- so I want to
25 talk about the second bullet point, which I think

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1 Q -- generally these provisions on financial
2 assistance apply to scholarship aid. That's
3 generally what's at issue?

4 MS. CAPPS: Objection to form.

5 THE WITNESS: No, that's not correct.

6 Scholarship aid is included --

7 BY MR. SIEGEL:

8 Q Okay.

9 A -- but in financial assistance, it talks
10 about assisting anyone that provides any type of
11 assistance, not just --

12 Q Okay.

13 A -- aid.

14 Q Yeah, I understand that.

15 What I'm saying is: Are you aware of any
16 court cases that have addressed the question of
17 whether the regulations, provisions on financial
18 assistance apply to nonscholarship aid? Any
19 courts that have interpreted that?

20 A I am not aware of any cases.

21 Q Okay. Are you aware of any policy
22 interpretation or letter produced by the U.S.
23 Department of Education that has answered that
24 question?

25 MS. CAPPS: Objection, form.

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1 summing up -- the -- what the broadcast model will
2 do is the opposite of what happened in Cohen,
3 correct? Why don't I just read you what you said.

4 A Yes. It says:

5 While the broadcast model does the
6 opposite of the action in Cohen -- and by that I
7 meant it doesn't demote teams, it elevates teams.

8 It says:

9 By elevating some teams to a higher level
10 of treatment to the exclusion of all others.

11 So, in essence, you're doing the same
12 thing. You have unequal participation
13 opportunities based on sex, whether you're
14 demoting or elevating.

15 Q Okay. And again, you're not aware of any
16 legal authority that's analogous to the set of
17 facts here, as opposed to being the opposite, that
18 supports your conclusion that plaintiffs'
19 broadcast model would violate the participation
20 opportunities found with Title IX, correct?

21 A No, I'm not aware of any.

22 Q Okay. So this is a novel conclusion based
23 on your legal analysis of that case law, correct?

24 MS. CAPPS: Objection, form.

25 THE WITNESS: It is, because I think it's

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1 the appropriate application of the law. But this
2 is a novel broadcast model that's never been
3 looked at before.

4 BY MR. SIEGEL:

5 Q Okay. And you've acknowledged
6 in -- you've acknowledged in the past that through
7 its bylaws, the NCAA controls the number of roster
8 spots and corresponding number of scholarships
9 that schools may provide, correct?

10 A Yes, the NCAA does that.

11 Q Okay. And this -- this
12 interpretation -- whether you're right -- whether
13 you're right or wrong or not, whether or not this
14 opposite situation violates Title IX is another
15 example of an issue that -- whose answer would not
16 vary depending on the identity of the plaintiff,
17 correct?

18 A No. It depends on the situation, not the
19 identity of a party.

20 Q Right. But I'm saying whether or not
21 the -- the elevation of a team, meaning, you know,
22 the broadcast model versus -- your claimed
23 elevation of a team, I'm not agreeing with that,
24 but as opposed to the demotion of a team, whether
25 or not that is a corresponding situation that

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1 things.

2 Q I'm saying as a legal -- I'm not saying as
3 a practical matter. I'm saying as a legal matter.

4 MS. CAPPS: Objection.

5 BY MR. SIEGEL:

6 Q Are you -- are you saying that --

7 MS. CAPPS: Form.

8 BY MR. SIEGEL:

9 Q -- if -- are you saying that if a certain
10 amount of compensation is given to male athletes
11 and is held to be subject to Title IX, that you
12 cannot provide an equal amount of compensation to
13 female athletes to resolve any Title IX issues?

14 MS. CAPPS: Object to form.

15 THE WITNESS: Okay. So you're saying
16 hypothetically --

17 BY MR. SIEGEL:

18 Q Yes.

19 A -- right? Or are you saying specifically?

20 Q I'm saying hypothetically.

21 A Okay. So hypothetically, if institutions
22 were providing unequal aid that they could -- that
23 they -- or if there was a source of -- so your
24 hypothetical is if there's a source that's coming
25 in to provide a benefit aid-wise to one sex --

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1 Q Mm-hmm.

2 A -- the institution can just fix that by
3 providing an equal amount on the other side.

4 Q Could they?

5 MS. CAPPS: Objection, form.

6 BY MR. SIEGEL:

7 Q Hypothetically?

8 A Hypothetically, it's possible.

9 Q There's no legal -- I'm saying it's not --
10 it wouldn't be -- it wouldn't be -- it wouldn't be
11 illegal to do that?

12 MS. CAPPS: Objection, form, calls for a
13 legal conclusion.

14 THE WITNESS: It would not be a violation
15 or it wouldn't be illegal as far as I know. But
16 that's not Rascher's model.

17 BY MR. SIEGEL:

18 Q Okay. Does Rascher's model say anything
19 about what schools or conferences can or cannot
20 provide outside of what his model provides?

21 A No. Rascher's model says what needs to be
22 provided, and his model provides an enormous
23 amount of benefit to men and a teeny-tiny little
24 benefit to women.

25 Q Well, it's not what needs to be provided.

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1 THE WITNESS: I understand that the
2 defendants have filed a motion in opposition of
3 the class action, and -- but other than that, I'm
4 not aware of any of the other legal proceedings --
5 BY MR. SIEGEL:

6 Q Yeah, that --

7 A -- in this case.

8 Q Sorry. You read plaintiffs' motion for
9 class certification, correct?

10 A Yes.

11 Q So you understand that plaintiffs have
12 moved to certify their damages classes?

13 A Yes.

14 Q And they have moved to certify an
15 injunctive relief class?

16 A Yes.

17 Q Okay. And the claim that you've been
18 focused on is the claim in the absence of the NIL
19 rules. There would have been compensation paid
20 to, at a minimum, Power Five full scholarship
21 football and men's and women's basketball players
22 for use of their NILs in broadcast?

23 A I think you threw me off at the beginning
24 of that sentence.

25 Q Sure. I was saying one of their claims,

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1 MS. CAPPS: Objection, form.

2 THE WITNESS: I -- yes, I looked at the
3 broadcast model and applied Title IX, and so I
4 offered my opinion as whether or not Title IX
5 would be implicated by that model.

6 BY MR. SIEGEL:

7 Q Okay. And again, you're opining about
8 Dr. Rascher's class-wide methodology for awarding
9 past damages to Power Five Conference football and
10 men's and women's basketball players, right?

11 A Yes.

12 Q Okay. And, again, if you look at -- if
13 you look at your table of contents, Part V, one
14 conclusion is that plaintiffs' broadcast model
15 violates Title IX?

16 A Yes. I was going for a punchy headline.

17 Q And you succeeded.

18 And, again, you understand that
19 Dr. Rascher's broadcast NIL damages model, in his
20 class certification report, is designed to explain
21 to the Court, among other things, how plaintiffs
22 can prove past class-wide impact and measure past
23 damages to award damages to members of the Power
24 Five men's football and basketball class and
25 women's basketball class?

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1 Q Okay. And you also understand that your
2 report is not intended to be an expert report on
3 the merits, correct?

4 A Of the case?

5 Q The merits of the case, correct?

6 A No.

7 Q It's an -- opposing plaintiffs' motion for
8 class certification?

9 A It is an expert report on how Title IX is
10 implicated by the plaintiffs' broadcast model.

11 Q But it's intended to be an expert report
12 in support of defendants' opposition to
13 certification of plaintiffs' past damages
14 broadcast NIL class?

15 A Yes.

16 MR. SIEGEL: Okay. It's fine for a break
17 now.

18 THE VIDEOGRAPHER: We are going off the
19 record at 1:40.

20 (Recess taken.)

21 THE VIDEOGRAPHER: We are back on the
22 record at 2:00 p.m.

23 BY MR. SIEGEL:

24 Q Professor Osborne, you agreed at the
25 beginning of this deposition you don't have a

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1 master's, Ph.D., or other advanced degree in
2 economics, right?

3 A I do not.

4 Q Okay. And you don't teach any economics
5 courses, do you?

6 A I do not.

7 Q Okay. And you're not offering an expert
8 economic opinion in your report?

9 A Absolutely am not.

10 Q And you've never been an administrator at
11 a school with a D1 athletic program, correct?

12 A I have not.

13 Q Or an administrator, permanent position,
14 at a school with a football team?

15 A No.

16 Q Okay. And the last time you were part of
17 an athletic department's permanent staff was 1998,
18 correct?

19 A Yes.

20 Q Okay. Can you turn to page 52 of your
21 report.

22 Are you there?

23 A Um-hmm.

24 Q Okay. I just want to read to you
25 paragraph 131:

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1 A Okay.

2 Q I'll just take your word for it there.

3 Did you conduct any independent studies
4 for this case of what the impact of Rascher's
5 damages model would have been on Power Five
6 athletic programs during the class period?

7 A No.

8 Q So you didn't do any empirical work on
9 this point, correct?

10 A No, I did not.

11 Q And certainly nothing -- no independent
12 studies to show that it -- that it would require a
13 massive overhaul of any NCAA athletic programs?

14 A What do you mean by "no independent
15 studies"?

16 Q You didn't do any empirical independent
17 work to determine whether or not it would have
18 required a massive overhaul of any NCAA athletic
19 programs?

20 A No. I looked at past research that had
21 been done relative to Title IX.

22 Q But none of the academic studies or
23 analyses that you cited was anything close to an
24 analysis of Rascher's damages proposal to support
25 the contention that a massive overhaul would have

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1 been required, right?

2 MS. CAPPS: Objection, form.

3 THE WITNESS: No. None of those other
4 studies involved the amount that Rascher's model
5 would have. And again, Rascher's model is brand
6 new, so nobody else could have studied it or
7 implications of it.

8 BY MR. SIEGEL:

9 Q But an economist or someone with the
10 proper credentials could have done an empirical
11 analysis to determine whether or not spending the
12 amount of money implicated by Dr. Rascher's model
13 would have required a massive overhaul of
14 Division I programs during the class period,
15 correct?

16 A As I said, I'm not an economist, and I've
17 never studied that, so I can't give an opinion
18 about that.

19 Q You certainly didn't do one?

20 A I didn't do any economic studies relative
21 to this, no.

22 Q And none of these studies that are -- that
23 you cited are of any circumstance closely
24 analogous to what you believe to be the
25 consequences of Rascher's damages model, correct?

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1 payments would require massive overhauls to
2 athletic programs.

3 A Yes.

4 Q So that necessarily would require looking
5 at the budgets and expenditures and resources of
6 athletic programs during the class period?

7 A Yes. And in doing a Title IX audit, you
8 regularly look at budgets and figures and all of
9 those things, but it is not an economic analysis.

10 Q You don't cite any of those Title IX
11 audits or any other analyses that you or anyone
12 else has done that comes remotely close to
13 supporting what you're saying, do you?

14 MS. CAPPS: Objection form.

15 THE WITNESS: No, I'm just applying the
16 regulations, et cetera, and showing that impact,
17 but this is my conclusion, yes.

18 BY MR. SIEGEL:

19 Q Okay. Page 53, at the top you write:

20 It would be virtually impossible to locate
21 sufficient additional funds to ensure some form of
22 compensation for female student-athletes
23 proportional to the significant amount that
24 plaintiffs contemplate for male studies -- for
25 student-athletes under the broadcast model.

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1 Is that -- is that one of your expert
2 opinions in this report?

3 A It is.

4 Q Okay. Again, you did no independent
5 studies to actually support that opinion --

6 MS. CAPPS: Objection, form.

7 BY MR. SIEGEL:

8 Q -- did you?

9 A No, because --

10 MS. CAPPS: Same objection.

11 THE WITNESS: -- an independent study is
12 not necessary when you just look at the amounts
13 that are involved and how that impacts an
14 athletics department.

15 MR. SIEGEL: I'll strike that as
16 nonresponsive.

17 BY MR. SIEGEL:

18 Q In addition to no independent studies,
19 again, none of the secondary sources you cite are
20 doing any kind of analysis that would be relevant
21 to -- strike that.

22 None of the secondary sources you cite are
23 analyses of how many -- how much additional funds
24 would be needed to compensate female
25 student-athletes proportional to the amounts that

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1 plaintiffs contemplate for male student-athletes
2 under the broadcast model --

3 MS. CAPPS: Objection, form.

4 BY MR. SIEGEL:

5 Q -- correct?

6 MS. CAPPS: Same objection, form.

7 THE WITNESS: Can you repeat that, please?

8 BY MR. SIEGEL:

9 Q Yeah. I'm just asking if any of these
10 secondary sources are examining the amount of
11 additional funds that are necessary to compensate
12 female student-athletes for certain levels of
13 expenditures for male student-athletes?

14 MS. CAPPS: Object to form.

15 THE WITNESS: No, none of those -- I've
16 repeated this several times, that none of those
17 studies can contemplate something that was just
18 created.

19 But on the very next page, it explains how
20 we -- you know, that from Rascher's model, there
21 are these numbers. And those numbers, I think,
22 speak for themselves in what kind of an impact
23 they would have on an athletics department.

24 BY MR. SIEGEL:

25 Q Okay. You looked at -- you looked at the

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1 spending on average in one conference.

2 Is that -- is that what you've done here?

3 A To provide an example, yes.

4 Q Okay. But you don't look at the budget of
5 the schools in that conference to determine
6 whether or not a massive overhaul of the
7 expenditures would be necessary to compensate for
8 the expenditures you identify on page 54, do you?

9 A I do not do that because a Title IX
10 analysis would have to be unique to each
11 institution, and it would take a while to do all
12 of that. And it wasn't necessary to do that
13 for --

14 Q Okay.

15 A -- this report, because, again, these
16 numbers speak for themselves.

17 Q Like, for example, you didn't look at --
18 at how conferences spend -- if -- if 10 percent of
19 the broadcast NIL money was provided to college
20 athletes, did you look -- did you do a careful
21 study of how the conferences spend the other
22 90 percent of their revenues --

23 MS. CAPPS: Objection, form.

24 BY MR. SIEGEL:

25 Q -- of -- from the broadcast agreements?

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1 A I didn't do an economic analysis of that,
2 no.

3 Q So -- and you realize -- 90 -- 90 percent
4 is billions of dollars. You do understand that,
5 right --

6 MS. CAPPS: Objection, form.

7 BY MR. SIEGEL:

8 Q -- of these broadcast agreements during
9 the class period?

10 A Yes, because this huge number here
11 reflects 10 percent.

12 Q Right. So the amount that's -- the
13 90 percent that would have been kept in this
14 but-for world is nine times that?

15 A Yes, 90 percent is nine times that, yes,
16 math.

17 Q Math --

18 A Good.

19 Q -- right?

20 Okay. So you didn't -- and you didn't
21 look at, like, for example, how much the
22 conferences spend on their athletic -- on the
23 conference commissioners or how much the schools
24 spend on athletic directors, football coaches,
25 basketball coaches, assistant basketball coaches,

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1 or any of the other extremely high expenditures on
2 certain personnel --

3 MS. CAPPS: Objection, form.

4 BY MR. SIEGEL:

5 Q -- at their athletic department?

6 MS. CAPPS: Same objection, form.

7 THE WITNESS: I did not look at any of
8 those things specifically, no, because my job was
9 not to fix this model. It was to show what the
10 Title IX implications of it would be.

11 BY MR. SIEGEL:

12 Q I understand that.

13 But you're offering opinions on how
14 many -- the types of expenditures that would be
15 required to not -- the massive overall that would
16 be required of athletic department budgets or that
17 it would be virtually impossible to locate
18 additional funds. I mean, that's going beyond
19 Title IX. That's offering an opinion about
20 whether or not financially this is something that
21 would be feasible?

22 A Right. It's whether -- whether an
23 institution would be able to comply with Title IX
24 if this spending was required.

25 Q And you're look -- and you're offering

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1 opinions on whether or not this financially
2 economically would be feasible?

3 A That's correct.

4 Q But you're not an economist.

5 A No, but this is math. Doesn't require --

6 Q Please answer my question:

7 Are you an economist?

8 A I have already answered that, that I am
9 not.

10 Q And you've done no empirical studies to
11 support --

12 MS. CAPPS: Please let her finish her --

13 BY MR. SIEGEL:

14 Q -- these conclusions?

15 MS. CAPPS: -- her answers. You're
16 interrupting each other.

17 MR. SIEGEL: Sorry.

18 BY MR. SIEGEL:

19 Q And you've done no empirical studies to
20 support these conclusions?

21 A No, I'm not an economist.

22 Q Okay. And I want you to look at
23 paragraph -- excuse me.

24 On page 53, the middle of page 53, and the
25 last sentence, "Any offsetting payments."

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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2 I, Cynthia J. Conforti, Certified

3 Shorthand Reporter No. 084-003064, CSR, CRR, and a
4 Notary Public in and for the County of Cook, State
5 of Illinois, the officer before whom the
6 foregoing deposition was taken, do hereby certify
7 that the foregoing transcript is a true and
8 correct record of the testimony given; that said
9 testimony was taken by me stenographically and
10 thereafter reduced to typewriting under my
11 direction; that reading and signing was requested;
12 and that I am neither counsel for, related to, nor
13 employed by any of the parties to this case and
14 have no interest, financial or otherwise, in its
15 outcome.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand and affixed my notarial seal this 19th day of
18 June, 2023.

19

20 My commission expires: October 30, 2023

21

22 *Cynthia J. Conforti*
23

24 Notary Public in and for the
25 State of Illinois